



EIE: Changes to create low and mid-rise housing

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We are city-shapers.

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About UDIA NSW

Established in 1963, the Urban Development Institute of Australia NSW (UDIA) has over the past 60 years represented our more than 450 member companies spanning all facets of the urban development industry in NSW – including developers, consultants, local government and state agencies.

UDIA invests in evidence-based research that informs our advocacy to state, federal and local government, so that development policies and critical investment are directed to where they are needed the most. Together with our Members, we shape the places where people will live for generations to come and in doing so... we are city shapers.

Executive Summary

The NSW Government's continued focus on turning the housing crisis around and delivering a sustainable pipeline of new homes for future generations in New South Wales (NSW) by committing to the National Housing Accord to deliver 377,000 new well-located homes over the next five years is an ambitious target, but one which is critical if we are to create an equitable and prosperous society. While there are real challenges to overcome in addressing our housing crisis, reforms such as the ones outlined in the Explanation of Intended Effect: Changes to create low and mid-rise housing (the EIE) are a step in the right direction.

As the peak industry body representing the leading participants in urban development in NSW, UDIA NSW remains supportive of the intent to deliver more low to mid-rise housing in accessible locations and is pleased to provide our submission on the proposed changes outlined in the EIE.

The NSW Government's continued focus to rebalance growth from west to east and to build housing near existing public infrastructure, where there is latent capacity, is also supported. Land is a finite resource, and we must look for opportunities to leverage the massive investment made in public infrastructure to provide housing in accessible mixed-use communities, creating housing, employment opportunities, vibrancy and amenity in higher density locations. UDIA NSW does however caution that this renewed focus should not come at the expense of greenfield development, which must remain an important part of our housing supply pipeline and remains the preferred choice for many consumers.

NSW has struggled to realise greater housing diversity, especially in regard to missing middle and medium density products. This has been in large part due to restrictions on permissibility, high land values in NSW and the excessively restrictive controls under the low-rise housing diversity code or local environmental plans and development controls plans. And while UDIA is supportive of the intent of the policy changes outlined in the EIE, there is the very real risk that the challenges which limited the uptake of this type of development in the past will not be overcome and the desired new housing is not achieved. In this regard UDIA does not believe that the densities proposed under the EIE, through the maximum heights and FSRs, are sufficient to support development feasibilities and as such realise the desired housing outcomes. This will be especially true for lower socioeconomic areas where developments costs, constructions costs, professional fees and taxes, contributions and levies are the same as more prosperous areas but the consumers capacity to pay is greatly reduced. Making development in these areas unviable and reducing the likely take-up of the provisions. This is explained more in the body of this submission.

Building on the experience, skills and knowledge of our membership base we have made a number of constructive recommendations to improve the policy, ensuring it catalyses the development industry, and encourages those who will ultimately be responsible for delivering the much needed housing to invest in the identified areas.

UDIA firmly believes that the housing crisis has the potential to be the spark that drives meaningful change across our society. There is now a strong social license to deliver more housing for future generations and a strong commitment from government to do exactly that. We must now make sure that policies such as the ones proposed in the EIE are enacted and not watered down as a result of local politics and anti-development, anti-change scaremongering.

Recommendations Summary

RECOMMENDATION 1 – DPHI immediately release the modelling work that demonstrates viable development feasibilities and expected take-up under the proposed policy provisions, supporting open and transparent government policy development and providing confidence to the development industry and respective stakeholders.

RECOMMENDATION 2 – Expand the permissibility to include locations which are 800m walking distance from a major bus stop (to be further defined in consultation with transport providers and development industry)

RECOMMENDATION 3 – Remove the restrictive and convoluted definition for E1 Local Centres and MU1 Mixed Use and rather have the provisions apply to all land within 800m walking distance of land zoned E1 and MU1.

RECOMMENDATION 4 – Allow Torrens Title Subdivision of terraces where one or more development standard or controls are not met, but the Subdivision supports the functional operation of the housing.

RECOMMENDATION 5 – The provisions should override local heritage conservation controls and local heritage statements and DPHI should work with local governments to identify areas of genuine heritage or character values to be retained.

RECOMMENDATION 6 – Government and DPHI work with the NSWRA to provide greater clarity on how development on flood prone land can proceed ahead of revised flood modelling and establishment of new flood planning levels.

RECOMMENDATION 7 – DPHI immediately release the modelling work that demonstrates viable development feasibilities and expected take-up under the proposed policy provisions having regard to the cumulative impact of developer contributions, fees and taxes.

RECOMMENDATION 9 – Remove the restrictive and convoluted definition for E1 Local Centres and MU1 Mixed Use and rather have the provisions apply to all land within 800m walking distance of land zoned E1 and MU1.

RECOMMENDATION 10 – The maximum building heights be increased to better align with the proposed maximum FSRs to 42m within 800m and 21m with 1.2-1.6km.

RECOMMENDATION 11 – A full review of the ADG is undertaken to analyse its impact on development feasibilities, consumer choice and housing delivery.

RECOMMENDATION 12 – Government continue to promote the take-up of the affordable housing bonus and undertake further engagement with industry to investigate viable ways to boost the supply of affordable rental housing.

Development Feasibility

UDIA is supportive of the intent of the policy changes proposed within the EIE however our fundamental concern is that the policy is not founded in a sound understanding of development feasibility and as such the desired housing outcomes are unlikely to be achieved.

The Department of Planning, Housing and Infrastructure (DPHI) have consistently stated that modelling has been undertaken to understand the viability and expected take-up of the Housing Accord initiatives including the low to mid-rise housing in the subject locations however, to date this modelling has not been released publicly. This lack of transparency is concerning and dramatically reduces the development industry's confidence in the proposed policies. This modelling must be released before the policy is enacted to allow stakeholders the opportunity to interrogate the inputs, assumptions and methodology.

UDIA NSW through our Members is undertaking our own feasibility modelling work to better understand the realities of developing low to mid rise housing in the identified locations. This work has not been completed in time for this submission but will be shared with DPHI and Government as soon as practically possible.

UDIA recommends:

1. DPHI immediately release the modelling work that demonstrates viable development feasibilities and expected take-up under the proposed policy provisions supporting open and transparent government policy development and providing confidence to the development industry and respective stakeholders.

Low-rise housing

Multi dwelling housing and manor homes

UDIA NSW is supportive of efforts to increase the supply of multi-dwelling housing and manor homes in NSW. Previous efforts to promote this housing typology in NSW have failed due to limited permissibility or overly restrictive controls, which negatively impacted development feasibility and ultimately made this typology unviable.

UDIA is supportive of the expanded permissibility but raises concern with the limited and confusing definition of 'station and town centre precincts.' In this regard the definition should be expanded to include other accessible sites, such as those in close proximity to established bus stops or multimodal transport nodes. Limiting permissibility to only sites which benefit from train stations, disadvantages locations that do not have the benefit of a heavy rail station or metro station. This includes large swathes of the Eastern Suburbs or Northern Beaches. Likewise, the convoluted definition under the E1 and M1 zoning must be reworded. "*A wide range of frequently needed goods and services such as full line supermarkets, shops and restaurants*" is ambiguous and does not provide the level of certainty needed to attract investment and catalyse development. The very nature of the zones as a local centre or mixed-use area, means they will include a range of land uses and public services which would make them ideal locations for increased densities. It is proven that increased densities attract business, as the resident population contributes to making their

operations more viable. This means that the housing could be the catalyst for place creation, rather than a response to an existing location's character and business offerings.

UDIA Recommends:

2. Expand the permissibility to include locations which are 800m walking distance from a major bus stop (to be further defined in consultation with transport providers and development industry)
3. Remove the restrictive and convoluted definition for E1 Local Centres and MUI Mixed Use and rather have the provisions apply to all land within 800m walking distance of land zoned E1 and MUI.

Non-refusal standards

UDIA NSW supports the introduction of non-refusal standards. This provides greater certainty for applicants and removes a degree of subjectivity from the assessment process.

The proposed non-refusal standards for terraces, multi-dwelling housing and manor houses being the maximum building heights, maximum FSR, minimum site area, minimum lot width and minimum car parking rates, are all supported in principle subject to further detail on the development feasibility of these housing typologies being released.

Subdivision

UDIA NSW support the intent to permit Torrens Title Subdivision of multi dwelling housing (terraces) provided the proposed lots meet appropriate size, width and access requirements. However, we contend that this could go further to permit subdivision even where one or more of the standards are not met, but where the Torrens Title Subdivision remains practical and viable.

UDIA Recommends:

4. Allow Torrens Title Subdivision of terraces where one or more development standard or controls are not met, but the subdivision supports the functional operation of the housing.

Application of other planning controls

The continued application of other planning controls, especially heritage controls, will unduly restrict the application of these provisions and reduce the likely take-up by developers, ultimately resulting in fewer homes under the provisions than intended. It has been widely demonstrated that local heritage conservation areas and local character statements sterilise any new development, as complying with a subjective interpretation of 'character' is near impossible when seeking to deliver new housing. If government are serious about delivering the desired housing outcomes, they must seek to override local heritage and character controls in the identified areas. Work should then be done to identify areas of genuine conservation and character value, which can be preserved and which do not limit new housing and further exacerbate our housing crisis.

It is critical to understand how many of the identified areas would be impacted by heritage or character overlays to understand the likely impact. In this regard it is critical that any government

modelling is released to enable a transparent and fulsome understanding of the proposals and their impact.

UDIA Recommends:

5. The provisions should override local heritage conservation controls and local heritage statements and DPHI should work with local governments to identify areas of genuine heritage or character value to be retained.

Dual Occupancies

The expanded permissibility of dual occupancies to all low-density residential zones in NSW is supported. This expanded permissibility should also include the general residential zone rather than waiting for councils to proactively make the change.

All comments made above in relation to multi-dwelling and manor houses should be taken to apply to dual-occupancies as well.

Flooding

There is currently a huge degree of uncertainty as to how development on land identified as flood prone can proceed. The 2022 NSW Flood Inquiry has called into question the validity of existing flood modelling, especially in regard to the climate inputs, and made a recommendation that the NSW Reconstruction Authority (NSWRA) lead the work to remodel high risk areas and set new flood planning levels. This has left councils in limbo without a clear interim way to proceed with applications on flood prone land and as such, are seeking to take an overly cautious approach by restricting any residential development below the Probable Maximum Flood level. This is contrary to the Inquiry's central position that an appropriate risk based framework be established in NSW. In this regard Government and DPHI should work with the NSWRA to establish an interim pathway so as not to further limit the potential housing outcomes intended under the EIE.

UDIA Recommends:

6. Government and DPHI work with the NSWRA to provide greater clarity on how development on flood prone land can proceed ahead of revised flood modelling and establishment of new flood planning levels.

Infrastructure Contributions

As stated previously in this submission, UDIA is concerned that the development feasibilities and many of the identified locations will not be viable to attract investment and result in new housing. Central to this is the cumulative impact of developer contributions, fees and taxes. UDIA again calls on DPHI to release their feasibility modelling to demonstrate how developer contributions have been considered and how the cumulative impact of all contributions, fees and taxes are considered.

UDIA Recommends:

7. DPHI immediately release the modelling work that demonstrates viable development feasibilities and expected take-up under the proposed policy provisions having regard to the cumulative impact of developer contributions, fees and taxes.

Mid-rise housing

Station and town centre precincts

UDIA NSW supports the expanded application of mid-rise housing in accessible and well serviced locations across the Six Cities Region. This a vitally important housing typology which has been unduly restricted in our state for too long.

Consistent with our recommendations for low-rise housing we strongly encourage DPHI to expand the definition of these precincts to include bus stops and intermodal nodes and remove the phrase *"a wide range of frequently needed goods and services such as full line supermarkets, shops and restaurants"* from the definition of applicable E1 and MU1 zones.

UDIA Recommends:

8. Expand the permissibility to include locations which are 800m walking distance from a major bus stop (to be further defined in consultation with transport providers and development industry)
9. Remove the restrictive and convoluted definition for E1 Local Centres and MU1 Mixed Use and rather have the provisions apply to all land within 800m walking distance of land zoned E1 and MU1.

Non-refusal standards

UDIA NSW support the adoption of non-refusal standards for mid-rise housing in an effort to provide greater certainty to applicants and remove subjectivity from the assessment process. However, UDIA contends that the maximum building heights and maximum FSR are insufficient to support development feasibilities, attract investment and catalyse the desired housing outcomes. Consistent with our recommendations for the low-rise housing changes we urge Government to immediately release any modelling undertaken to better understand the justification for the proposed provisions.

Misalignment between Maximum FSR and Maximum Building Height

The proposed maximum building height and MAXIMUM FSRS do not align in many locations. In most instances a 3:1 FSR in residential zone typically would permit a 10-12 storey building, much higher than proposed maximum building height of 21m or 6 storeys proposed in the EIE. Likewise, a 2:1 FSR in a residential zone typically allows for an 8-9 storey building, again more than the maximum 16m or 4-5 storeys proposed in the EIE. The heights and FSRS could potentially match in town centres with ground levels built to the street boundary, such as shoptop housing with commercial podiums, but is unlikely to correlate across many of the other proposed accessible locations.

Given the expected challenges in making development in these locations viable, it is recommended that maximum heights be increased to align with the FSRS. In this regard the maximum building height should be increased to 42m to allow 10-12 storey buildings.

And while graduation of density from a higher density to a lower density is supported, the proposed distances are too small and should be increased. In this regard it is recommended that the first

radius be increased to 800m (allowing 10-12 stories) and the second radius extending to 1.2 or 1.6km (allowing 5-6 storeys). This also better reflects the growing adoption of multi-modal transport, where commuters catch a bus or ride a bike (electric or pedal) or other mode of transport a short distance before catching the train for the longer leg of the journey.

UDIA recommends:

10. The maximum building heights be increased to better align with the proposed maximum FSRs to 42m within 800m and 21m with 1.2-1.6km.

Design Criteria

UDIA supports good design outcomes across all housing typologies including low to mid-rise housing. It is critical that housing design promotes healthy and sustainable outcomes while promoting a positive sense of wellbeing, community and character. However, it has been widely acknowledged that the Apartment Design Guide (ADG) in NSW has gone too far and is having a detrimental impact on development feasibility, consumer choice and housing affordability. In this regard the proposed variation of ADG standards are supported however it is recommended that a more fulsome review of the ADG be undertaken to analyse its true impact on development feasibilities and housing delivery.

11. A full review of the ADG be undertaken to analyse its impact on development feasibilities, consumer choice and housing delivery.

Affordable Housing

UDIA supports the continued application of the affordable housing bonus provisions as an effective mechanism to encourage private industry to deliver affordable rental housing. However UDIA opposes the introduction of any inclusionary zoning schemes as part of these reforms. Inclusionary zoning constitutes an additional tax on development, which will only result in further weakening of development feasibilities and ultimately less housing supply across the entire housing continuum from affordable through to market. An inclusionary zoning rate will also likely be low, resulting in the need for a monetary contribution, which cannot be readily leveraged to deliver housing, as local government or the state government still need to find suitable sites and make their own feasibilities work.

UDIA will work with Government to model the options to deliver more affordable housing where it does not come at the expense of overall housing supply and run counter to the intent of the Government's own housing initiatives.

UDIA recommends:

12. Government continues to promote the take-up of the affordable housing bonus and undertake further engagement with industry to investigate viable ways to boost the supply of affordable rental housing.

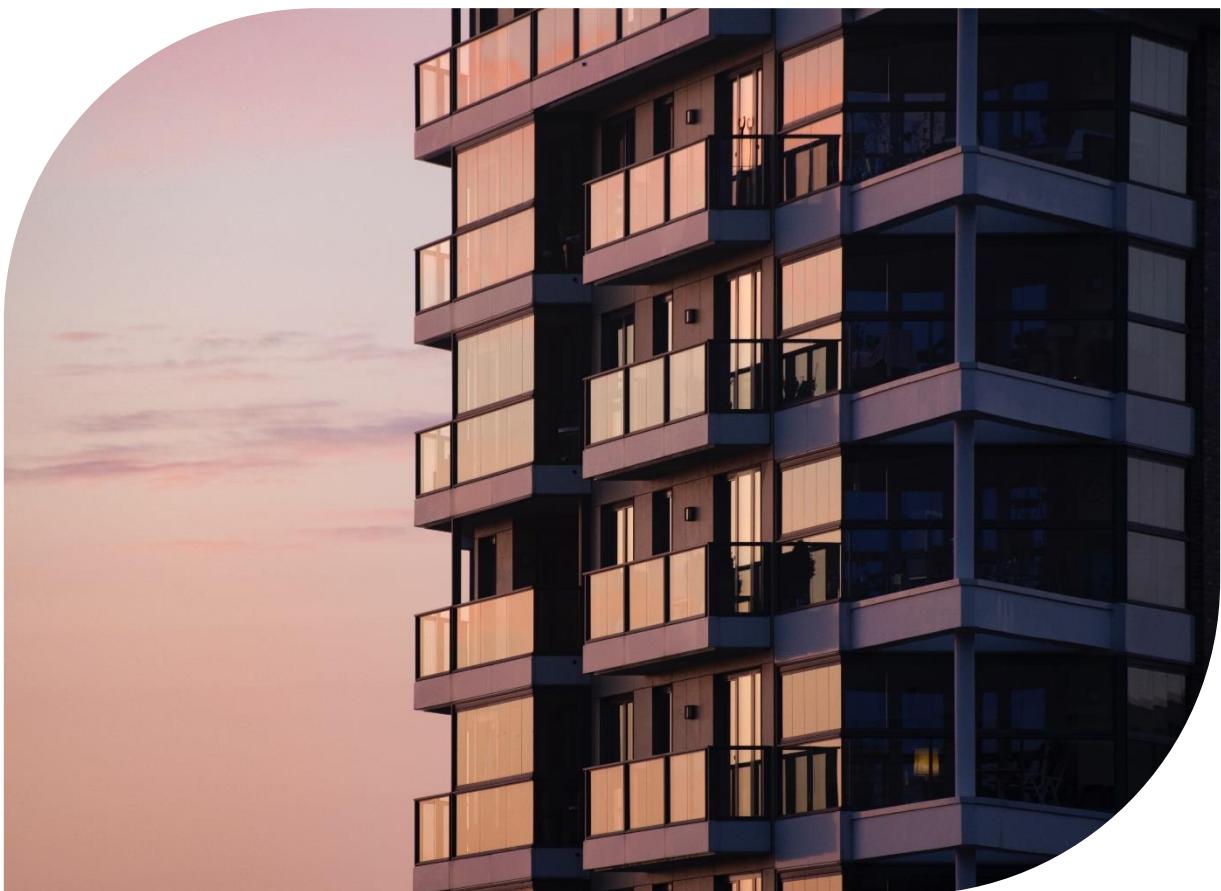
Conclusion

UDIA supports the intent of the EIE to encourage more low to mid-rise housing in accessible locations close to public transport and local and mixed use centres. And while we support the majority of the draft provisions proposed in the EIE, it is clear that the outcomes could be greatly improved if the recommendations outlined in this submission are adopted.

The Government's lofty ambitions to meet the National Housing Accord targets can only be achieved in concert with the development industry, who will ultimately build the much-needed housing. That is why provisions need to be based in commercial realties and have regard to development feasibility if they wish to encourage investment and achieve desired outcomes. While UDIA is doing work to further analyse the impact of these proposals on development feasibilities as well as the proposed changes under the Transit Oriented Development (TOD) program it is critical that Government releases its modelling to enable a fulsome and transparent review.

No single policy announcement or reform will fix the housing crisis in NSW, however proposals such as those outlined in the EIE are a welcome step in the right direction. UDIA remains committed to working with Government and the Department to address the crisis and ensure policy initiatives are drafted and implemented to deliver the best possible outcomes.

We thank the Department for their continued efforts towards addressing our housing crisis and value its approach to engagement and collaboration.



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